



US Army Corps  
of Engineers

# Construction Bulletin

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## CEMP-E

**Subject:** Indefinite Delivery Construction Contracts

**Applicability:** GUIDANCE

### 1. REFERENCES:

- a. Federal Acquisition Regulation (FAR)
- b. Army FAR Supplement (AFARS)
- c. Engineer FAR Supplement (EFARS)
- d. AR 420-10, Management of Installation Directorates of Public Work
- e. Deputy Secretary of Defense Memorandum, dated 28 October, 1996, Subject: Consolidation of Contract Requirements (Enclosure 1)
- f. CERM-F Memorandum, dated 14 July 1995, Subject: Bona Fide Need (Enclosure 2)

2. **PURPOSE.** To provide information and guidance on use of indefinite delivery construction contracts for installation support. (Note: See AFARS, Part 17.90 for Army policy on Job Order Contracting).

### 3. DEFINITIONS.

a. **Indefinite-Delivery Contract.** One of the five main contract types provided for by FAR Part 16. The other types are: (1) Fixed-Price, (2) Cost-Reimbursement, (3) Incentive, and (4) Time-And-Materials, Labor-Hour, and Letter. There are three types of indefinite-delivery contracts: Definite-quantity contracts, requirements contracts, and indefinite quantity contracts.

b. **Construction.** For the purposes and in the context of this guidance construction includes the acquisition of real property maintenance and repair and minor construction in accordance with the definitions in AR 420-10.

c. **Architect-Engineer Services.** FAR Part 36.601-4 provides a detailed definition of these services. FAR Part 36.601-3© covers contract statements of work which include both architect-engineer services and other services and requires the contracting officer to follow procedures governed by the dominant or substantial nature of the work in the contract scope.

d. **Job Order Contract (JOC).** A type of indefinite-delivery, indefinite-quantity contract which is awarded on the basis of full and open competition and effective competition and is used to acquire real property maintenance and repair or minor construction at installation level (post, camp, or station). The JOC includes a comprehensive collection of detailed repair, maintenance, and minor construction task descriptions or specifications, units of measure and pre-established unit prices for each of these discrete tasks. Each project or job ordered under a JOC is normally comprised of a number of predescribed and prepriced tasks. See AFARS Part 17.90.

e. **Indefinite-Delivery Construction Contract.** An indefinite-delivery, indefinite-quantity type contract (3.a.) for construction services (3.b.) awarded on the basis of established labor and overhead rates. Provides for an indefinite quantity, within stated limits, of services to be furnished during a fixed period with deliveries or performance to be scheduled by placing task orders with the contractor. Differs from JOC above because only labor and overhead rates are prepriced. Material and equipment costs and profit are negotiated for each individual task order. This type of contract is useful when the prepricing features under JOC are not possible because the nature of the work is less defined at the time of award.

f. **Task Order.** An order for the performance of services under an indefinite-delivery contract.

g. **Delivery Order.** An order for the delivery of supplies under an indefinite-delivery contract.

4. **ACQUISITION PLANNING.** Acquisition planning requirements are applicable to indefinite-delivery contracts and programs that are installation wide or programs that extend beyond the geographical boundary of the MSC. In accordance with the requirements of EFARS Part 7, a formal acquisition plan is required for any indefinite-delivery contract (or for any program involving multiple indefinite-delivery contracts) estimated at \$15 million or more for all years, including options, or \$5 million or more for any one year for base or installation support (including JOC). Plans are to be submitted to HQUSACE (ATTN: CEPR) for approval.

5. **MULTIPLE AWARDS**. More than one indefinite-delivery construction contract may be awarded for the same scope of work (e.g., single installation or area of responsibility) in accordance with provisions of FAR Part 16.504. This Part also provides exceptions for not using multiple awards. Minimum guarantees for each multiple award contract must be established in accordance with EFARS Part 16.504. The decision to use multiple awards must be made during the acquisition planning with customers and the project team. Potential advantages of multiple awards include flexibility in meeting requirements, additional performance incentive for the contractor(s) and leverage for the government in dealing with performance issues. Potential disadvantages include additional administrative costs, redundant mobilization and site superintendence costs, difficulty in workload projection and scheduling by multiple contractors, and the effort needed to develop and implement a sound management decision process for ordering work. (Note: Ordering Officers are not allowed to "auction" tasks to multiple award contractors!) Ordering procedures are covered by EFARS Part 16.505.

6. **SMALL BUSINESS**. The use of indefinite-delivery construction contracts can have the appearance and effect of "bundling" or packaging multiple requirements under one large contract to effectively shut out small business contractors. To avoid adverse impact on small business, large IDC contracts are generally required to contain significant and substantial subcontracting opportunities or preferences. These must be adequately addressed in the appropriate project/program management or acquisition plan. Commands planning to use this type of contract must assure full coordination with the appropriate Small Business Administration office and document agreement using the DD Form 2579, Small Business Coordination Record. In accordance with Department of Defense (DOD) policy (reference i.e.), when planning to consolidate contracts or requirements that might result in preclusion of small business the contracting officer must conduct an analysis to determine what significant benefits will accrue.

7. **ORDERING OFFICER APPOINTMENTS**. DOD and Army policy restricts ordering officers in awarding delivery and task orders. Ordering officers may only order from a "menu" of prepriced contract items. In some instances limited negotiation is allowed for items not contained in the basic contract that are below the simplified purchase threshold (\$2500). JOC is an example of a prepriced contract with prepricing of orders.

8. **BONA FIDE NEED RULE**. This rule requires that an appropriation may only be used to meet a legitimate need that arises or exists in the fiscal year of that appropriation. It focuses not on the legitimacy of the requirement (there must however, be a legitimate requirement), but upon the proper year funds to meet that requirement. Special attention is required when executing task orders near the end of the fiscal year to insure that this rule is not violated for the sake of obligating expiring funds. The checklist provided with reference 1.f. memorandum along with policy in DFAS-IN Regulation 37-1, should be used by those planning and executing indefinite delivery construction contracts. Early coordination and planning with customers to identify requirements, request proposals, and negotiate task orders subject to availability of funds (SAF) can mitigate the risk of

violating this rule during year end funding surges. Prudent prepositioning of SAF task orders should be an integral part of the contract execution strategy for indefinite delivery construction contracts. Policy and procedures for issuing solicitations SAF are covered by AFARS 1.602(a)(ii).

9. **COMBINATION TASK ORDERS.** Task orders for indefinite-delivery construction contracts may include both services and construction in the same order and both Davis-Bacon Act and Service Contract Act wage rates may be appropriate. Task orders may not be awarded solely for architect-engineer services (3.c.). This violates the Brooks Act and provisions of FAR Part 36.6. However, task orders may include both construction and incidental A-E services. Although similar to "design-build" the "design-build" terminology is only appropriate to contracts executed under provisions of 10 USC 2862 or 10 USC 2305a and 41 USC 253m as implemented by FAR Part 36.3.

Fixed-price task orders should be awarded whenever possible. Time and material (T&M) task orders and combination T&M and fixed-priced task orders are permitted but prudent use is essential. Task orders with T&M features may be used only when it is not possible at the time of placing the order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. A T&M task order provides no positive profit incentive to the contractor for cost control or labor efficiency and should be used only when absolutely necessary.

10. **TRAINING.** Commanders are responsible to assure that all members of the acquisition team understand the rules, regulations and procedures governing the planning and execution of an indefinite delivery construction contract. Commands should develop operating procedures tailored to their particular organization and customers.

11. **INFORMATION SOURCES AND RESOURCES.** Various USACE commands are presently using, or are planning to use, this type of contract. Following is a partial listing.

Kansas City District, Small Project Indefinite Delivery Type (SPIDT) Contract

Mobile District, Indefinite Delivery/Indefinite Quantity Contract for Installation Support

Fort Worth District, IDIQ Contracts with T&M Capability

Seattle District, Small Projects Office Initiatives

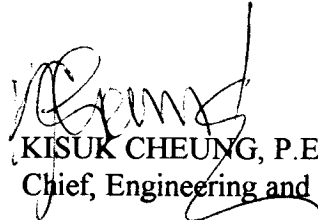
Huntsville Engineering and Support Center, Simplified Facility Support Process

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SUBJECT: Indefinite Delivery Construction Contracts

12. This CB was coordinated with the following HQUSACE organizations: Office of the Principal Assistant Responsible for Contracting (CEPR-ZA); Office of the Chief Counsel (CECC-C); and Office of Small and Disadvantaged Business Utilization (CEDB).

Encl



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